

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4362 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
 2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

MADANLAL NATWARLAL PANJI & ORS.

Versus

STATE OF GUJARAT & ANR.

Appearance:

Kum. V.P. Shah, Advocate, for the Petitioners
Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 04/04/96

ORAL JUDGEMENT

The order passed by and on behalf of the State of Gujarat (respondent No. 1 herein) on 18th July 1989 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under art. 226 of the Constitution of India. By its impugned order, respondent No. 1 upset the order

passed by the Competent Authority at Surat (respondent No. 2 herein) on 15th February 1986 under sec. 8(4) of the Act closing the proceeding by declaring that the holding of the petitioners was not in excess of the ceiling limit. It may be mentioned that respondent No. 1 has declared the holding of the petitioners separately to be in excess of the ceiling limit for the purposes of the Act.

2. The facts giving rise to this petition move in a narrow compass. The petitioners filed their separate declarations in the prescribed form under sec. 6(1) of the Act. Those declarations were processed by respondent No. 2. After observing necessary formalities under sec. 8 of the Act, by his common order passed on 15th February 1986, respondent No. 2 came to the conclusion that the holding of the petitioners was not in excess of the ceiling limit and the proceedings were ordered to be closed. Its copy is at Annexure A to this petition. It appears to have come to the notice of the concerned officer of respondent No. 1. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. A show-cause notice therefore came to be issued on 13th June 1988 calling upon the petitioners to show cause why the order at Annexure A to this petition should not be revised. The petitioners appear to have filed their reply thereto on 23rd July 1988. Thereafter, by the order passed on 18th July 1989 under sec. 34 of the Act by and on behalf of respondent No. 1, the order at Annexure A to this petition came to be revised and the holding of the petitioners separately was declared excess as mentioned therein. Its copy is at Annexure B to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning its correctness.

3. Kum. Shah for the petitioners has urged that the holding of the petitioners included certain constructed properties and they deserve to be excluded from their holding in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. She has further urged that the holding of the petitioners included certain agricultural lands and they deserve to be excluded from their holding in view of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 SC 2465. As against this, learned Assistant Government Pleader Shri Sompura for the respondents has

urged that it does not become clear from the material on record whether or not the constructed properties were in existence prior to coming into force of the Act in an authorised manner. He has further submitted that it does not become clear from the material on record whether or not a master plan answering its definition contained in sec. 2(h) of the Act was in existence and what was the situation of the lands shown therein and whether or not any agricultural operations were in fact carried on therein. In that view of the matter, according to him, it would be difficult to accept the submissions urged before me by the learned advocate for the petitioners.

4. I think the authorities below have not applied their mind to this aspect of the matter. If the constructed properties were in existence prior to coming into force of the Act after obtaining the necessary building permission, they can be excluded from the holding of the petitioners in view of the aforesaid binding ruling of the Supreme Court in the case of Smt. Meera Gupta (supra). An inquiry in that regard will have therefore to be made.

5. So far as the applicability of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum (supra) is concerned, it will have to be ascertained whether or not any master plan answering its definition contained in sec. 2(h) of the Act was in existence prior to coming into force of the Act and what was the situation of the lands in question shown therein. It has to be further ascertained whether or not any agricultural operations were in fact carried on therein on the date of coming into force of the Act. The fact finding in that regard can best be done by respondent No. 2.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexures A and B to this petition cannot be sustained in law. They both deserve to be quashed and set aside. The matter deserves to be remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No. 2 herein) on 15th February 1986 at Annexure A to this petition as also the order passed by and on behalf of the State Government (respondent No. 1 herein) on 18th July 1989 at Annexure B to this petition are quashed and set aside. The matter is remanded to

respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
